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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,791	12/20/2001	James W. Clark	KCX-391(16284)	9606
22827	7590	12/14/2004	EXAMINER	
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			BOYD, JENNIFER A	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 12/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/027,791

Applicant(s)

CLARK ET AL.

Examiner

Jennifer A Boyd

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-38 and 40-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-38 and 40-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/29/04
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 29, 2004 has been entered. The Applicant's Amendments and Accompanying Remarks, filed September 29, 2004, have been entered and have been carefully considered. Claims 1, 8, 27, 30 and 35 – 36 are amended, claim 7 is cancelled, claim 55 is added and claims 1 – 6, 8 – 38 and 40 – 55 are pending. The invention as currently claimed is not found to be patentable for reasons herein below.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

3. Claims 1 – 6, 8 - 9, 11 – 38 and 49 - 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harrison et al. (US 2002/0103098 A1). The details of the rejection can be found in paragraph 3 of the previous Office Action dated July 7, 2004. The rejection is maintained.

Claims 1, 27 and 35 are amended to require that the sanitizing formulation comprises a surfactant component “consisting essentially of one or more nonionic surfactants”. Harrison

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teaches that the composition may contain a nonionic surfactant (page 4, [0056]). It should be noted that the transitional phrase “consisting essentially of” limits the scope of a claim to the specified materials or steps “and those that do not materially affect the basic and novel characteristic(s)” of the claimed invention. *In re Herz*, 537 F.2d 549, 551-52, 190 USPQ 461, 463 (CCPA 1976). The burden is upon the Applicant to show that the additional components do affect the basic and novel characteristics of the invention. For the purposes of searching for and applying prior art under 35 U.S.C. 102 and 103, absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, “consisting essentially of” will be construed as equivalent to “comprising.” See MPEP 2111.03. For the purposes of examination at this time, the Examiner has interpreted “consisting essentially of” as “comprising”. Claim 1 has been amended to require that the antimicrobial agent is present in the sanitizing formulation up to about 1% by weight. Harrison teaches that the quaternary ammonium compound is present in an amount of from about 0.0025% to about 0.5% wt based on the total weight of the inventive composition (page 2, [0017]). It should be noted that Harrison’s disclosure overlaps the Applicant’s requirements.

Claim 55 has been added. Harrison teaches that the quaternary ammonium compound is present in an amount of from about 0.0025% to about 0.5% wt based on the total weight of the inventive composition (page 2, [0017]).

4. Claims 1 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dodd et al. (US 6,656,456). The details of the rejection can be found in paragraph 4 of the previous Office Action dated July 7, 2004. The rejection is maintained.

Claim 1 is amended to require that the sanitizing formulation comprises a surfactant component “consisting essentially of one or more nonionic surfactants”. Dodd teaches that various surfactants can be optionally added (column 16, lines 55 – 69) such as PEG 20-methyl glucoside sequistearate (column 19, lines 30 – 35), which is disclosed to be a nonionic surfactant in Applicant’s Specification on page 18. It should be noted that the transitional phrase “consisting essentially of” limits the scope of a claim to the specified materials or steps “and those that do not materially affect the basic and novel characteristic(s)” of the claimed invention. *In re Herz*, 537 F.2d 549, 551-52, 190 USPQ 461, 463 (CCPA 1976). The burden is upon the Applicant to show that the additional components do affect the basic and novel characteristics of the invention. For the purposes of searching for and applying prior art under 35 U.S.C. 102 and 103, absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, “consisting essentially of” will be construed as equivalent to “comprising.” See MPEP 2111.03. For the purposes of examination at this time, the Examiner has interpreted “consisting essentially of” as “comprising”. Claim 1 has been amended to require that the antimicrobial agent is present in the sanitizing formulation up to about 1% by weight.). Dodd teaches that the quaternary compound is present in the range from about 0.001% to about 0.8% by weight of the composition (column 9, lines 1 – 15). It should be noted that Dodd’s disclosure overlaps the Applicant’s requirements.

Response to Arguments

5. Applicant's arguments filed September 29, 2004 have been fully considered but they are not persuasive.

6. In response to Applicant's argument that the inclusion of the anionic surfactant of Harrison materially affects the basic and novel characteristics of the sanitizing formulation, the Examiner submits that there is no evidence of record to substantiate Applicant's allegation. The Applicant has indicated that the inclusion of anionic surfactant would cause the antimicrobial agents to undesirably precipitate out. However, Applicant further admits that Harrison discloses additional components to dissolve the precipitate. If the basic and novel characteristic of the Applicant's invention is that no precipitate would remain on the cleaned surface after utilizing the wipe, the Examiner submits that the precipitate of Harrison would not be of concern because the additional components would dissolve the precipitate. Therefore, the end result after wiping with Applicant's wipe and the wipe of Harrison would be the same. The Examiner requests that the Applicant clearly state what are the basic and novel characteristics of the invention and how the inclusion of an anionic surfactant would affect the basic and novel characteristics.

7. In response to Applicant's argument that Harrison fails to teach that the sanitizing formulation is configured so that it releases from the substrate as a solution during use of the wiper in food service applications, the Examiner respectfully argues that Harrison meets all the structural and chemical limitations set forth by the Applicant. There is nothing on record that shows that the fabric of Harrison cannot be incorporated into a wipe for use in food service applications. It would have been obvious to incorporate the wipe of Harrison into use for a food service application motivated by the desire to expand the range of uses for the wipe.

8. In response to Applicant's argument that Harrison does not disclose that the quaternary compound is present in the sanitizing solution in an amount less than 2000 parts per million of the solution, the Examiner submits that the use of less than 2000 parts per million of quaternary

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compound would be a result of optimization. If the claimed ranges have unexpected results, the burden is upon the Applicant to demonstrate that the claimed ranges are not a matter of simple optimization. The Examiner highly suggests to the Applicant to submit a 37 CFR 1.132

Declaration to establish unexpected results. In the Declaration, the Applicant should compare a sufficient number of tests both inside and outside the claimed range to show the criticality of the claimed range. In re Hill, 284 F.2d 955, 128 USPQ 197 (CCPA 1960) and must compare the claimed subject matter with the closest prior art to be effective to rebut a prima facie case of obviousness.

9. In response to Applicant's argument that Harrison fails to teach the claimed log reduction of *E. Coli*, the Examiner submits that the log reduction of at least 2 is inherent to the Harrison product. If said property is not inherent, it is asserted that Applicant's claim must be incomplete. In other words, if Applicant's asserts a lack of inherency in the Harrison product, then Applicant's claimed invention is missing an element that is critical to the invention, which would patentably distinguish it from Harrison.

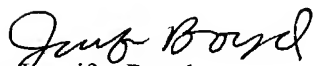
10. In response to Applicant's argument that Harrison fails to recognize the benefits that may be achieved by configuring the sanitizing formulation to the particular wiper, the Examiner submits that the final product of Harrison is the same as the product of the Applicant. The formulating process such as choosing the appropriate sanitizing formula based on the wipe used is irrelevant to final product. If the Applicant wishes for this selection process to be given weight, it is suggested that the Applicant to incorporate the selection process into method claims.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A Boyd whose telephone number is 571-272-1473. The examiner can normally be reached on Monday thru Friday (8:30am - 6:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jennifer Boyd
December 3, 2004


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